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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,218	01/27/2000	David H. Sitrick	STD 1757	9593

20787 7590 03/17/2004

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SKOKIE, IL 60077

EXAMINER

FLETCHER, MARLON T

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/492,218

Applicant(s)

SITRICK, DAVID H.

Examiner

Marlon T Fletcher

Art Unit

2837

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____


3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 41-51.Claim(s) objected to: 52, 77, 78, 97 and 98.Claim(s) rejected: 1-40, 53-76, 79-96 and 99-113.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Marlon T. Fletcher
Primary Examiner
Art Unit: 2837

Response to Arguments

1. Applicant's arguments filed 01/24/200 have been fully considered but they are not persuasive.

It is believed that the rejection is proper and that the reference reads on the rejected claims.

Response to Amendment

2. The Declaration filed on 01/21/2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Lemelson et al. ('788) reference.

First, the declaration recites "I am an attorney at law and a member of the firm of Sitrick & Sitrick whose offices are located at 8340 N. Lincoln Avenue in Skokie, Illinois. I am registered to practice before the United States Patent & Trademark Office, having been awarded Reg. No. 29.349. I have power of attorney to prosecute the above application. I am also the sole inventor on the above-referenced patent application. This application was filed on January 27, 2000, and issued on March 17, 1998." This statement is inconsistent and incorrect. While the present application "09/492,218" was filed on January 27, 2000, it has not issued as a patent and could not issue prior to the filing date.

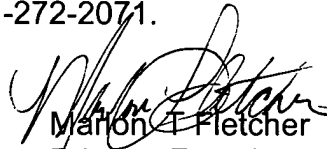
Second, the specification filed with the declaration, does not support all of the claims in the present application. Even if accepted, only those claims that are supported by the specification dated October 23, 1995, would be valid over the Lemelson reference.

Third, the previous Declaration under 37 CFR 1.131 swore back to December 6, 1995, based on Drawings. The present Declaration filed 01/21/04, provides a specification containing only three figures. This application is a divisional of an application which is CIP of the application which was filed July 10, 1996. It is clear that newly added material was applied to the specification of the CIP. There is a sufficient amount of specification and drawings filed with the present application 09/492,218, that is not present in the specification filed with the Declaration filed 01/21/04.

The final rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on 571-272-2071.


Marlon T Fletcher
Primary Examiner
Art Unit 2837

MTF
March 10, 2004